

Application Number 10/823,483
Amendment dated September 7, 2006
Response to Office Action mailed July 7, 2006

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Remarks/Arguments

The Office Action summary page indicates that Examiner objects to the drawings filed on 12 April 2004. However, Applicant has been unable to find what it is about the Drawings that is objected to, and has therefore not filed replacement Drawings.

Item 1. Claims 15-20 have been cancelled from the application.

Items 4 – 6. Claims 1-14 stand rejected under 35 USC §103 (a).

In each of **Items 4 – 6** of the Final Office Action, Examiner cites DiMatteo as part of the prior art in rejecting these claims as being unpatentable.

The present Application was filed on April 12 2004, and is a CIP of Application No. 09/481,803, filed on August 31, 1998, which is now U.S. Patent No. 6,720,704, which is itself a CIP of Application No. 08/924,910, filed September 8, 1997. The claims of the continuation-in-part application that are disclosed in the manner provided by the first paragraph of 35 U.S.C. 112 in the prior-filed application are entitled to the benefit of the filing date of the prior-filed application. The features of a capacitor sensor and piezoelectric actuators are disclosed in the prior-filed application and therefore claims 1-14 of the present invention are entitled to the benefit of the filing date of the prior-filed application, which is September 8, 1997.

DiMatteo was filed on October 25, 1999 and is a CIP of an earlier application filed on June 30, 1997, now U.S. Patent No. 6,084,173. This parent document is cited in the present Application. In this parent document, DiMatteo does not teach the use of capacitor sensors or piezo electric elements, referring simply to "*The fine adjustment of the crucial micron range separation gap between the surfaces 1 and 2 may be controlled by such devices as piezoelectric controlled leveling stages or the like such as the Model 8095 of New Focus Corporation.*" (column 3, lines 19-22). The effective filing date of DiMatteo in relation to piezoelements and capacitor sensors is therefore October 25, 1999, which is *after* the effective filing date of the present invention.

Therefore Examiner's rejection of claims 1-7 under 35 USC 103(a) as being unpatentable over Shakouri et al and DiMatteo, of claims 8 and 9 under 35 USC 103(a) as being unpatentable over

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Shakouri et al and DiMatteo in further view of Richards, and of claims 10-14 under 35 USC 103(a) as being unpatentable over Shakouri et al and DiMatteo in further view of Huffman is improper as DiMatteo is not prior art.

Applicant respectfully submits that this application is in condition for allowance, and such disposition is earnestly solicited. If the Examiner believes that discussing the application with the Applicant over the telephone might advance prosecution, Applicant would welcome the opportunity to do so.

Applicant is making this reply within two months of the mailing date of the final action so that if the Advisory Action is not mailed until after the end of the three-month shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee required to be paid pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action.

Respectfully submitted,


Avto TAVKHELIDZE
Inventor